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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/542,324

04/04/2007

Bradley E. Parker

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24978 7590 05/27/2008

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EXAMINER

WEINSTEIN, STEVEN L

ART UNIT

PAPER NUMBER

1794

MAIL DATE

DELIVERY MODE

05/27/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/542,324	<b>Applicant(s)</b> PARKER, BRADLEY E.	
	<b>Examiner</b> Steven L. Weinstein	<b>Art Unit</b> 1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-24 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. ____.                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>7/13/05</u> .   | 6) <input type="checkbox"/> Other: ____.                          |

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1,2,4,6-9,13,14,16, and 18-22 are rejected under 35 U.S.C. 102(b) as being anticipated by Mitsuo (JP2000-168157) or Iwasa Akio (JP2001-136859).

In regard to claim 1, both Mitsuo and Iwasa Akio disclose it was well established in the art to mark the shell of eggs with radiant energy so as to cause discoloration of the eggshell, thereby forming a marking. The direct application of a laser by the references, which is applicant's radiant energy source as well (claim 6), inherently produces a discoloration mark on the egg. Mitsuo even uses the term "discolored". In regard to claims 2 and 4, both references teach the marking communicates freshness information which would inherently be in the form of text or graphics. In regard to claim 7, since both references use the laser to make the mark, the references would inherently leave areas unaffected by the laser so that one could see the mark. In regard to claim 8, both references teach a machine which moves the egg through a region where it is marked. In regard to claim 9, neither reference employs a foreign material applied to the egg to form the marking. In regard to claim 13, both references show machines which handles eggs and thus are egg handling machines. In regard to claim 14, neither reference includes structure for applying a radiant energy sensitive material to the egg. In regard to claim 16, the references show applying the radiant energy source inline. In regard to claims 18 and 19, both references teach arranging a radiant

energy source in proximity to an egg handling machine so that the radiant energy from the source will impinge on eggs moved by conveyance through a predetermined region, and said method is performed without adding any apparatus which applies a radiant energy sensitive material onto the eggs, respectively. In regard to claims 20-22, both references teach an egg having an information bearing marking thereon formed entirely by discolored material of the shell, and wherein the egg is raw.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 23 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mitsuo (JP2000-168157) or Iwasa Akio (JP2001-136859).

In regard to claims 23 and 24, the particular state of the egg within the shell, i.e., raw, or pasteurized, but not cooked, or hard-boiled, is seen to have been an obvious matter of choice and/or design. Applicant is not the inventor of pasteurized, uncooked eggs nor hard boiled eggs.

Claims 3,5 and 10-12, 15 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mitsuo (JP2000-168157) in view of Iwasa Akio (JP2001-136859), further in view of Baumeister (DE10109109) and Gartzten et al (DE4322252), further in view of Egosi (5,198,843).

Mitsuo (JP2000-168157) and Iwasa Akio (JP2001-136859) as further evidenced by Baumeister (DE10109109) and Gartzten et al (DE4322252), disclose it was

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notoriously conventional to mark eggs using lasers. Claim 3 differs from the combination only in the recitation that the mark is an advertisement. The nature of a mark or indicia or message is not seen to be patentably significant. That is, once it was conventional to employ a laser to make a mark on an article, including eggs, the particular mark or message one provides is seen to have been an obvious matter of choice. The point of indicia is to pass on some information/message. The content of the information/message is purely up to the individual who seeks to transmit the information/message. Whether one chooses to transfer the message "Have a Good Day" or "Expiration Date", the message itself has no patentable significance on the fact the product is an egg with indicia. Although the teachings of Egosi would not be necessary for this 35 USC103 rejection to be proper, nevertheless Egosi even discloses that applicant was not the first to impart advertising indicia onto an egg. In regard to claim 5, to provide both advertising and freshness date information would have been an obvious matter of choice. In regard to claim 15, Egosi discloses employing an egg printing source in an egg grading system and to modify the combination and provide a conventional egg laser printing source with a conventional egg grading system would therefore have been obvious for its art recognized and applicants intended function. In regard to claim 17, whether the source is offline or online would also have been an obvious matter of choice.

The remainder of the references cited on the PTO892 form are cited as pertinent art.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven L. Weinstein whose telephone number is 571-272-1410. The examiner can normally be reached on Monday-Friday 7:00 A.M.-2:30 P.M..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Steve Weinstein/  
Primary Examiner, Art Unit 1794

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